

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 12 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0083-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
GLENN CORNELL WORLEY,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR201000114

Honorable James L. Conlogue, Judge

REVIEW GRANTED; RELIEF DENIED

Glenn C. Worley

Florence  
In Propria Persona

ESPINOSA, Judge.

¶1 After a jury trial, petitioner Glenn Worley was convicted of seven counts of sexual conduct with a minor under the age of fifteen, dangerous crimes against children. This court affirmed his convictions and prison terms on appeal. *State v. Worley*, No. 2 CA-CR 2010-0299 (memorandum decision filed Aug. 31, 2011). Worley then sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., claiming trial counsel had been ineffective. The trial court denied relief without an evidentiary hearing, finding

Worley had not raised a colorable claim. We will not disturb the court's ruling absent a clear abuse of discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006).

¶2 In his appeal, Worley challenged the sufficiency of the evidence and alleged the trial court had erred in three respects: denying his *Batson*<sup>1</sup> challenge to the state's peremptory strike of a prospective juror, refusing to dismiss a juror for misconduct, and precluding testimony related to the victim's cellular telephone records. The issue of juror misconduct was based on the fact that on the second day of trial, counsel had requested that juror B. be removed from the jury because counsel believed, based on the way B. was purportedly staring at Worley throughout the first day of trial, that he was disgusted with Worley and had already decided he was guilty of the charged offenses. Counsel argued B.'s behavior had been disruptive to other jurors because, instead of listening to the witnesses, they were watching B. watch Worley.

¶3 After counsel asked the trial court to make B. an alternate juror and to speak to three jurors who purportedly had been influenced by B.'s behavior, the court said it would observe B. Although counsel asked the court to obtain and review the security videotape from the first day of trial, the court agreed to preserve the videotape but later that day denied the request to remove B. based on the court's own observations of him. Worley argued on appeal that the court had erred by failing to inquire further about the issue and review the security videotape. But the court never ruled on the

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<sup>1</sup>*Batson v. Kentucky*, 476 U.S. 79 (1986).

request that it view the videotape, and counsel did not renew his request that the court do so. Therefore, this court rejected the claim on appeal that the trial court had abused its discretion by not removing B. from the panel. In his petition for post-conviction relief, Worley asserted that trial counsel's failure to include the surveillance video recording in the record on appeal and his failure to renew the request that the trial court review it or to designate B. as an alternate juror amounted to ineffective assistance that was prejudicial because it "resulted in an inability on the part of the Court of Appeals to resolve Petitioner's claims favorably on appeal." He argued counsel "failed to preserve the record for appeal, and he waived an important appellate right that his client had."

¶4 Worley also contended in his Rule 32 petition that trial counsel had been ineffective in connection with his attempt to seek admission of an exhibit at trial that had been marked as Exhibit D, which purportedly would have established the victim had been sending electronic correspondence ("e-mails") to herself. E-mails between the victim and Worley were admitted at trial, including an e-mail from Worley that had pornography attached to it. On appeal, Worley argued the trial court had erred in precluding him from introducing Exhibit D on the ground that it was inadmissible hearsay. We rejected that argument, finding, *inter alia*, that because Exhibit D had not been provided to us we could not determine whether it truly was inadmissible hearsay; we concluded, "[i]n its absence, we assume the record supports the trial court's ruling." In his Rule 32 petition, Worley asserted trial counsel had been ineffective not only for failing "to make the document part of the trial record, he also failed to preserve the document itself." Worley asserted he had been prejudiced by counsel's deficient performance because it had impeded this court's

review of the issue on appeal to Worley's detriment and because evidence that the victim had sent e-mails to herself "would most likely have created a reasonable doubt in the minds of the jury."

¶5 In its minute entry denying Worley post-conviction relief and dismissing his petition, the trial court clearly identified the claims he had raised and addressed them thoroughly based on the proper legal standards and the court's own observations during trial, examining whether counsel's performance had been deficient and prejudicial. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (colorable claim of ineffective assistance of counsel requires showing that counsel's performance was deficient and prejudicial); *State v. Nash*, 143 Ariz. 392, 397-98, 694 P.2d 222, 227-28 (1985) (adopting *Strickland* test; stating prejudice element requires showing that outcome probably would have been different without deficient performance). With regard to its rejection of the claim that trial counsel had been ineffective with respect to the handling of the alleged juror misconduct, the court noted it had watched B. and had concluded at the time of trial that B. would be able to "render a fair and impartial verdict." Thus, the court found counsel's performance had not been deficient but even if it had been, any ineffectiveness had not been prejudicial. The court reached a similar conclusion with respect to Exhibit D, which the court attached to its minute entry. The court implicitly concluded it would have found the exhibit inadmissible regardless of what counsel had argued in attempting to introduce it. The court also could have found that even had trial counsel persuaded it to admit Exhibit D, the outcome at trial and on appeal would have been no different. In either case, the court did not view counsel's performance as prejudicial.

¶6 We adopt the trial court’s ruling because it is supported by the record and the applicable law. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Worley essentially has restated the claims he raised below and has not persuaded us the court abused its discretion in dismissing his petition. Therefore, although we grant Worley’s petition for review, relief is denied.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge